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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2006  
WAC 01 078 55354

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is the mother church of the [REDACTED]. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a member of the Sea Organization (Sea Org), a religious order of the Church of Scientology. The director determined that the petitioner had not established that: (1) the beneficiary is qualified for the position offered; (2) the beneficiary had the requisite two years of continuous work experience immediately preceding the filing date of the petition; (3) the beneficiary's position qualifies as a religious occupation; (4) the petitioner is able to provide for the beneficiary; or (5) the petitioner is a qualifying non-profit religious organization.

On appeal, counsel argues that the director had improperly issued the notice of intent to revoke, "because revocation proceedings cannot be used to seek additional evidence." Counsel cites *Tongatapu Woodcraft Hawaii, Ltd. V. Feldman*, 736 F.2d 1305 (9<sup>th</sup> Cir. 1984).

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). Here, the director's notice of intent to revoke was not merely a request for evidence; that request was predicated on the fact that the record of proceeding did not contain sufficient evidence to meet the petitioner's burden of proof. Thus, the petition should not have been approved based on that record, which amounts to good and sufficient cause for revocation.

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the

visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

Counsel cites a recent opinion, *Firstland Int'l, Inc. v. Ashcroft*, 377 F.3d 127 (2d Cir. 2004), issued by the United States Court of Appeals for the Second Circuit on August 2, 2004. In that opinion, the court in *Firstland* interpreted the third and fourth sentence of section 205 of the Act, 8 U.S.C. § 1155 (2003), to render the revocation of an approved immigrant petition ineffective where the beneficiary of the petition did not receive notice of the revocation before beginning his journey to the United States. *Firstland*, 377 F.3d at 130. Counsel asserts that the reasoning of this opinion must be applied to the present matter and accordingly, Citizenship and Immigration Services (CIS) may not revoke the approval because the beneficiary did not receive notice of the revocation before departing for the United States, since she was already in the United States when the director issued the revocation.<sup>1</sup>

According to the record of proceeding, the petitioner and beneficiary are in California; thus, this case did not arise in the Second Circuit. *Firstland* was never a binding precedent for this case. Even as a merely persuasive precedent, moreover, *Firstland* is no longer good law.

On December 17, 2004, the President signed the Intelligence Reform and Terrorism Prevention Act of 2004 (S. 2845). See Pub. L. No. 108-458, 118 Stat. 3638 (2004). Specifically relating to this matter, section 5304(c) of Public Law 108-458 amends section 205 of the Act by striking “Attorney General” and inserting “Secretary of Homeland Security” and by striking the final two sentences. Section 205 of the Act now reads:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title. Such revocation shall be effective as of the date of approval of any such petition.

Furthermore, section 5304(d) of Public Law 108-458 provides that the amendment made by section 5304(c) took effect on the date of enactment and that the amended version of section 205 applies to revocations under section 205 of the Act made before, on, or after such date. Accordingly, the amended statute specifically applies to the present matter and counsel’s *Firstland* argument no longer has merit. We shall consider the matter on its merits, rather than reverse based on the now-inapplicable claim that the director cannot revoke the approval.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the

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<sup>1</sup> The beneficiary was in the United States before the petition was even filed, let alone approved and revoked. Accordingly, it was physically impossible for CIS to have notified the beneficiary of the revocation before she departed for the United States. In effect, counsel’s interpretation of *Firstland* would have created a situation where any alien would have an irrevocable immigrant visa petition if the petitioner simply waited to file the petition until after the beneficiary arrived in the United States.

United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The issues of the beneficiary's qualifications, experience, and the nature of the position offered are all related to some extent. The regulation at 8 C.F.R. § 204.5(m)(2) offers the following pertinent definitions:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

*Religious vocation* means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

8 C.F.R. § 204.5(m)(3)(ii)(D) requires the petitioner to demonstrate that, if the alien is to work in a religious vocation or occupation, he or she is qualified in the religious vocation or occupation. 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A) require the petitioner to demonstrate that the beneficiary worked continuously in the occupation or vocation during the two years immediately preceding the petition's filing date.

The director's notice of intent to revoke did not discuss the issue of the beneficiary's qualifications for the position. 8 C.F.R. § 205.2(b) requires that the petitioner must be given the opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. A decision to revoke approval of a visa petition can only be grounded upon, and the petitioner is only obliged to respond to,

the factual allegations specified in the notice of intention to revoke. *Matter of Arias*, 19 I&N Dec. 568, 570 (BIA 1988).

The petitioner's initial submission includes a letter dated December 22, 2000 [REDACTED] a legal officer for the petitioning entity. The letterhead shows the petitioner's address as [REDACTED] [REDACTED] describes the beneficiary's work as a "vocation" and he states that the beneficiary is a member of the [REDACTED]. In an affidavit accompanying the petition, [REDACTED] personnel resources director for the petitioner, states:

[The beneficiary] has been a Scientologist since 1983. She began working as a religious worker in 1993. . . .

Since 1997 [the beneficiary] has been employed at [the petitioning church] as an Instructor for our staff. . . .

Moreover, [the beneficiary] has been a member of [REDACTED] since 1993. . . .

As is true for all Church staff members, the Church will provide [the beneficiary] with all food, clothing, transportation and health care. In addition, [the beneficiary] will receive a \$50.00 per week spending allowance.

In the notice of intent to revoke, the director discussed the question of whether or not the beneficiary works in a religious vocation. This issue, however, is not mentioned in the notice of revocation itself. Instead, the director only considers whether the beneficiary's position is a religious occupation.

[REDACTED] has provided various documents and affidavits discussing [REDACTED]. Upon careful consideration of these materials, the AAO is satisfied that [REDACTED] qualifies as a religious order, and that its members practice a religious vocation. Because a discussion of specific duties is germane to religious occupations, but not religious vocations, we need not analyze the beneficiary's exact duties in any detail.

Having concluded that [REDACTED] a religious order, we must now determine whether or not the beneficiary has been a full member of that order since at least two years prior to the petition's January 3, 2001 filing date, as required by section 101(a)(27)(C)(iii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(iii), and 8 C.F.R. §§ 204.5(m)(1) and (3)(ii)(A).

The petitioner's initial submission included no contemporaneous documentation of the beneficiary's work during the qualifying period; the petitioner submitted only statements asserting that such work took place. On February 20, 2001, the director instructed the petitioner to submit evidence of past employment. In response, the petitioner submits copies of Form W-2 Wage and Tax Statements indicating that the petitioner paid the beneficiary \$539.08 in 1997, \$1,760.08 in 1998, \$2,289.02 in 1999 and \$1,221.57 in 2000. Subsequently, the petitioner has submitted further Forms W-2 showing that the petitioner paid the beneficiary \$1,750.78 in 2001

and \$2,764.01 in 2002. The Forms W-2 show the petitioner's and the beneficiary's address as [REDACTED] states:

[The petitioner] has its corporate headquarters in Los Angeles, at [REDACTED] Address. [The petitioner] also has offices located at [REDACTED] [REDACTED] The Churches at both of these locations are part of the [petitioning church].

The Church offices and facilities located at [REDACTED] consist primarily of the Church's film and sound studios, and the administrative offices that support them. This division of [the petitioner] is called [REDACTED]

It is at this Church location that [the beneficiary] is employed.

The director approved the petition on July 27, 2001, but subsequently issued a notice of intent to revoke, based in part on a lack of evidence of the beneficiary's past experience and full membership in [REDACTED] The director observed: "although the petitioner indicated that the beneficiary was paid \$50 per week, or \$2,600 per year, for her services, IRS Forms W-2 submitted indicate the beneficiary was paid materially less than \$2,600 per year. The petitioner has thus submitted no corroborating evidence that the beneficiary was indeed employed in [REDACTED] that she was employed full time." We note, further, that the Forms W-2 do not directly establish the beneficiary's [REDACTED]

In its response to the notice of intent to revoke, the petitioner has not addressed the director's comments regarding the low amounts shown on the beneficiary's Forms W-2. The petitioner has submitted a copy of a letter [REDACTED] that the beneficiary "is given a weekly allowance of \$50.00." This does not explain why the Forms W-2 show considerably less than \$50 per week; it amounts only to one more claim by the petitioner that does not appear to be consistent with the documentary evidence.

The petitioner submits copies of a blank [REDACTED] and a blank "Application for Membership in [REDACTED] This submission proves that such documents exist, but, for reasons unexplained, the petitioner's submission does not include evidence that the beneficiary signed such a contract or executed such an application.

The petitioner does submit a copy of a "Declaration of Religious Commitment and Membership in [REDACTED] signed by the beneficiary and dated December 5, 2000, only a month before the petition's filing date. This document is, therefore, not contemporaneous evidence that the beneficiary joined the [REDACTED] January 1999 or earlier. Other certificates and documents, dated from 1997 to 2000, do not establish when the beneficiary became a [REDACTED]

The director revoked the approval of the petition on October 27, 2004, stating that the December 2000 "Declaration of Membership" does not show that the beneficiary was [REDACTED] in January 1999, and that the Forms W-2 issued to the beneficiary do not reflect continuous payments to the beneficiary throughout the qualifying period.

On appeal, the petitioner submits materials concerning the various steps required to join [REDACTED] completion of the Estates Project Force (EPF) and review by a Fitness Board. From materials made available to us, we have concluded that an individual who has successfully passed review by the Fitness Board can be considered a member of [REDACTED] to a recruit, who is not a full member). Therefore, the petitioner can establish that the beneficiary possesses the relevant experience by submitting church records showing that the beneficiary passed the Fitness Board at least two years before January 3, 2001 and continuously engaged in the vocation since that time.

In a supplement to the appeal, the petitioner submits copies of church documents, including a document indicating that the beneficiary received a provisional Fitness Board certificate on January 13, 1994. Other materials show that the beneficiary remained [REDACTED] after the initial provisional period expired. This indicates that the beneficiary was a full member of [REDACTED] nearly seven years prior to the petitioner's January 2001 filing date. This does not, however, demonstrate the continuity of the beneficiary's religious work during the two-year qualifying period. Simply belonging to a religious order is not the same thing as carrying on a religious vocation.

The director advised the petitioner, in the notice of intent, that the low payments shown on the beneficiary's Forms W-2 call into question the continuity of the beneficiary's work. The petitioner's response did not address this issue. The director repeated the same finding in the notice of revocation, and once again the petitioner has failed to address the issue. While it is conceivable that a reasonable explanation exists for the shortfall in the petitioner's payments to the beneficiary, it is indisputable that the petitioner has failed to provide such an explanation despite repeated opportunities to do so.

The documentation of the petitioner's payments to the beneficiary also relates to the next issue in contention. The regulation at 8 C.F.R. § 204.5(g)(2) states:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

In response to the notice of intent to revoke, the petitioner has submitted a letter from [REDACTED] the petitioner's Accounting Department, who states that the petitioner has "more than one hundred employees" and "the Church has the ability to provide for the support of the members of its religious order," [REDACTED]

The petitioner has also submitted balance sheets and other documents. These materials are not audited, but the petitioner has pursued the alternative means of establishing ability to pay by providing a declaration from a financial officer. The petitioner qualifies to use this alternative means because it has over one hundred employees.

The available evidence indicates that the petitioner has ample available funds to pay the beneficiary's minimal allowance and otherwise meet the beneficiary's basic needs. While the apparent underpayment of the beneficiary's stipend in 2000 raises legitimate questions, those questions do not involve the petitioner's ability to pay the beneficiary \$50 per week.

The final issue concerns the petitioner's status as a qualifying non-profit religious organization. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

The record contains an October 1, 1993 determination letter from the Internal Revenue Service (IRS), indicating that an organization by the petitioner's name is tax-exempt by virtue of classification as a church under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code). The IRS letter was sent to [REDACTED]. The director noted that this is not the address on the I-360 petition form, and determined that the petitioner had not shown that the exemption applies to the petitioner at its present address.

We note that the Forms W-2 issued to the beneficiary show [REDACTED] as both the employer's address and the beneficiary's address. Materials submitted on appeal also show this address. Prior to the initial approval of the petition, the petitioner had submitted a letter from [REDACTED] explaining:

[The petitioner] has its corporate offices [REDACTED] address. [The petitioner] also has offices located at [REDACTED]

The primary facilities located at the [REDACTED] address are the [REDACTED] and dissemination facilities, known [REDACTED] have also enclosed a copy of the fictitious business name statement [REDACTED]

Productions, a division of [the petitioning entity], which shows the address.

The Churches at both locations are part of [the petitioning entity].

The fictitious business name statement shows the address for the petitioning entity. The director did not explain why the above explanation and evidence is implausible or otherwise insufficient.

The director noted that, according to materials published by the petitioner, the price of items purchased from the petitioner, such as cassettes, is not tax-deductible as a charitable contribution. Therefore, the director concluded, "the very types of products produced are not tax-exempt." The non-deductibility of purchased items, however, does not nullify the tax-exempt status of the entity selling those items. As the cited church publication indicates: "The purchase of a Bible from a Christian ministry is not tax-deductible." Because the person giving money receives something from the church, the transaction is a purchase rather than a donation. This does not in any way vitiate the underlying tax-exempt status of the church from which the item is purchased.

Of greater concern would be evidence that is a self-contained, separately incorporated, for-profit entity, but there is no evidence a separate corporation. Rather, the fictitious business name statement in the record indicates that is a business name used by the petitioning entity. (The fictitious business name statement has since expired, but it was in effect as of the petition's filing date.) Indeed, the very filing of this fictitious business name statement appears to indicate does not exist as a separate corporation with its own distinct tax status.

We conclude, based on the above, that the petitioner, the beneficiary's intending employer, is a qualifying tax-exempt religious organization.

While the petitioner has overcome most of the stated grounds for revocation, the petitioner has not overcome all of them, and one ground has not been addressed at all. Each of the grounds concerns a basic regulatory requirement for eligibility, and therefore any one ground would, by itself, provide an independent and sufficient basis for revocation. Thus, overcoming most, or all but one, of the grounds for revocation does not warrant a reversal of the outcome of the director's decision; and meeting most, but not all, of the requirements for eligibility does not amount to a preponderance of evidence supporting approval of the petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.